Before the Federal Communications Commission Washington, D.C. 20554

In the Matter of)	
)	
County of El Paso, Colorado)	Call Sign WPTQ260
)	
Petition for Reconsideration)	

MEMORANDUM OPINION AND ORDER

Adopted: November 4, 2019 Released: November 4, 2019

By the Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. On May 21, 2019, the County of El Paso, Colorado (El Paso) filed a Petition for Reconsideration (Petition) concerning the partial termination of its license for call sign WPTQ260, for failure to timely construct.¹ For the reasons stated below, we grant the Petition in part and deny it in part and dismiss the request for extension of time to construct.

II. BACKGROUND

- 2. On May 15, 2019, the Bureau sent El Paso a Construction/Coverage Deadline Reminder Notice to remind El Paso that it was required to file a Notification of Construction within 15 days of the applicable construction/coverage deadline,² or file a timely request to extend the construction/coverage period.³ The construction deadline for call sign WPTQ260 was April 10, 2019. The Bureau subsequently notified El Paso that it had placed call sign WPTQ260 in Termination Pending status because it failed to meet the construction and construction notification requirements of the Commission's rules.⁴ The Bureau advised El Paso that when a licensee does not file the Required Notification or Extension of Time request, it is presumed that the license has not been constructed or the coverage requirement has not been met.⁵ El Paso neither filed a timely Notification of Construction nor requested an extension of time to construct prior to that deadline.
- 3. On May 21, 2019, El Paso filed the instant Petition and later filed a supplement to its Petition.⁶ In its Petition, El Paso stated that it timely constructed Locations 3 and 4 on its license but that it failed to file the requisite Notice of Construction for these two locations. El Paso also stated that it had not constructed Location 6 on its license by the April 10, 2019 construction deadline because of

¹ Petition for Reconsideration filed May 21, 2019 by the County of El Paso, as amended June 19, 2019 (Respectively Petition and Supplement).

² See 47 CFR § 1.946(d).

³ See 47 CFR § 1.946(e).

⁴ See Auto Termination Letter for WPTQ260 (dated May. 15, 2019) (Auto Termination Letter). As a condition of its authorization, the Commission's rules require the County of El Paso to construct certain frequencies on call sign WPTQ260 within one year. See 47 CFR §§ 1.946, 90.155(a).

⁵ Auto Termination Letter at 1.

⁶ Letter from Ed Bretag, County of Colorado Springs, to Federal Communications Commission, June 19, 2019.

connectivity issues and requested an extension of time until July 15, 2019 to construct Location 6.7 El Paso later advised the staff of the Public Safety and Homeland Security Bureau (Bureau) that Location 6 was constructed and operational as of August 1, 2019.8

III. DISCUSSION

- 4. Location 6. Requests for construction extension must be filed before the construction deadline. Paso's construction deadline for Location 6 was April 10, 2019 but its extension request was not filed until June 19, 2019 70 days after the construction deadline. The reasons El Paso advances for its failure to timely construct Location 6 are irrelevant as our rules and precedent establish that a license will be placed in Terminated status in the Commission's Universal Licensing System under these circumstances. Therefore, we deny El Paso's Petition with respect to Location 6 and dismiss its request for an extension. If El Paso desires to continue to operate on the frequencies previously authorized for Location 6 under call sign WPTQ260, it must file a properly coordinated application for license. If El Paso desires to operate while the referenced application for license is pending before the Commission, it must file a request for special temporary authority pursuant to section 1.931 of the Commission's rules. In the contraction of the Commission's rules.
- 5. Locations 3 and 4. El Paso admits that it did not file a timely Notice of Construction for Locations 3 and 4 but contends that the two sites were constructed and activated before the construction deadline. The Commission has clarified that the objective of the construction notification procedure is to verify whether licensees have in fact met their construction and coverage obligations, not to terminate licenses that are legitimately operating facilities because of a failure to notify of construction. Although El Paso provides no reason for failing to timely file its Notice of Construction for these locations, we recognize those facilities were legitimately in operation prior to the construction deadline. We perceive no overriding policy rationale, e.g., avoidance of spectrum warehousing, that prevents us from granting El Paso's Petition as it relates to Locations 3 and 4 and note that their operations were in the furtherance of the protection of life and property. That said, however, we do not diminish the importance of timely filing a Notice of Construction and admonish El Paso for its failure to do so.

⁷ *Id*.

⁸ E-mail from Ed Bretag, County of El Paso, to Tracy Simmons, Federal Communications Commission, Sept. 24, 2019 (stating "Site 6, which was the site I asked for an extension for, has been constructed and on the air since August 1st, 2019").

⁹ 47 CFR § 1.946 requires, in pertinent part, that "[t]he request [for extension of time to construct] must be filed before the expiration of the construction or coverage period."

¹⁰ 47 CFR § 1.946; *See, e.g., Orange County, New York*, Order, 33 FCC Rcd 11200 (PSHSB 2018) (Petition for reconsideration denied when, as here, licensee failed to construct by the deadline and requested an extension of time to construct after the deadline had passed.)

^{11 47} CFR § 1.931.

¹² Biennial Regulatory Review — Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95 and 101 of the Commission's Rules to Facilitate Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, Report and Order, 13 FCC Rcd 21027, 21076 para. 106 (1998) (Biennial Regulatory Review) (explaining that the rule providing for automatic license termination is not based on a licensee's failure to file a construction notification, "but based on actual failure by the licensee to meet its construction or coverage deadline.").

¹³ See Petition ("[a]ll of our changes have been made to ULS Loc. 3 and 4, those frequencies are in use").

¹⁴ See State of New York, Order, 27 FCC Rcd. 14912, 14913 para. 4 (PSHSB 2012), citing Amendment of Parts 1 and 90 of the Commission's Rules Concerning the Construction, Licensing, and Operation of Private Land Mobile Radio Stations, Notice of Proposed Rule Making, 5 FCC Rcd 6401 (1990).

IV. ORDERING CLAUSES

- 6. Accordingly, IT IS ORDERED, that, pursuant to the authority of sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r), and section 1.106 of the Commission's Rules, 47 CFR § 1.106, the Petition for Reconsideration filed by the County of El Paso, Colorado on May 21, 2019 IS GRANTED IN PART as described herein, and DENIED in all other respects.
- 7. IT IS FURTHER ORDERED that, pursuant to the authority of sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r), and section 1.106 of the Commission's Rules, 47 CFR § 1.106, the request for extension of time to construct Location 6. included as part of the Supplement filed by the County of El Paso, Colorado on June 19, 2019, IS DISMISSED AS MOOT.
- 8. IT IS FURTHER ORDERED, that the Licensing Branch of the Policy and Licensing Division of the Public Safety and Homeland Security Bureau SHALL DESIGNATE Location 6 in license, call sign WPTQ260, AS TERMINATED in the Commission's Universal Licensing System database.
- 9. This action is taken under delegated authority pursuant to sections 0.191 and 0.392 of the Commission's Rules, 47 CFR §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Michael J. Wilhelm, Chief Policy and Licensing Division Public Safety and Homeland Security Bureau